

FORTUNE OIL CO.

IBLA 82-898

Decided January 26, 1983

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offers in part and requiring execution of no-surface-occupancy stipulations as a condition of acceptance of the balance of the offers. W-74578 through W-74580, W-78663, W-79396, and W-79397.

Affirmed in part; set aside in part; and remanded.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases:  
Stipulations

Where BLM rejects over-the-counter noncompetitive oil and gas lease offers in part and imposes no-surface-occupancy stipulations on almost all of the remaining lands, covering almost 19,000 acres, and where the record contains nothing explaining BLM's reasons for its decision and no evidence showing that its decision was valid as to the specific lands involved, BLM's decision will be set aside and the matter remanded for further consideration.

APPEARANCES: John R. Anderson, president, Fortune Oil Company.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Fortune Oil Company (Fortune) has appealed the May 11, 1982, decision of the Wyoming State Office, Bureau of Land Management, dealing with six over-the-counter noncompetitive oil and gas lease offers. These offers cover over 24,000 acres in Natrona County, Wyoming. BLM rejected one offer (W-78663) in toto and rejected three more (W-74578, W-74580, and W-79397) in part, with the rejected portions totaling about 5,000 acres. It accepted the offers for the balance, almost 19,000 acres, but imposed no-surface-occupancy stipulations on all but about 2,400 acres of these remaining lands. Fortune appeals BLM's decision both insofar as it rejected its offers 1/ and insofar

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1/ BLM's decision rejected offer W-74580 in part as to lands included in a previously issued lease. Fortune does not appeal this part of BLM's decision. BLM's decision apparently neglected to list all of the lands within the

as it imposed no-surface-occupancy stipulations as a condition of acceptance of its offers.

BLM's decision states that it is "based on the findings and recommendations contained in the Programmatic Environmental Assessment [(PEA)] for Oil and Gas Leasing in the Platte River Resource Area." Its stated reason for rejecting some of the offers was simply that the lands are either "unsuitable for oil and gas leasing" or are "greater than 1/2 mile from the nearest suitable area of surface occupancy." Its stated reason for imposing the special stipulations, including the no-surface-occupancy stipulation, was simply that they are "required."

[1] Proposed special stipulations must be supported by valid reasons which reflect due regard for the public interest. Such stipulations will be upheld on appeal only if the record shows that BLM adequately considered the factors involved and if they reflect a reasonable means to accomplish a proper Departmental purpose. Fortune Oil Co., 68 IBLA 288 (1982); H. E. Shillander, 44 IBLA 216 (1979); Neva H. Henderson, 31 IBLA 217 (1977); A. A. McGregor, 18 IBLA 74 (1974). Similarly, a decision rejecting an oil and gas lease offer cannot be affirmed where it is not supported by valid reasons appearing in the record. See Thomas Connelly, 66 IBLA 265 (1982), and cases cited therein.

Here, the record contains a copy of the PEA, but no land report describing the specific lands or other information showing how the PEA specifically applies to these lands. The PEA itself is an extremely general consideration of environmental problems relating to oil and gas leasing in a large area in Wyoming. By itself, it does not constitute adequate support for BLM's decision to reject some of these offers or for its decision to impose a blanket no-surface-occupancy stipulation over almost all of the remaining lands, which make up nearly 19,000 acres.

The PEA contains a map (map 4, appendix 9) labeled "Slope Classes," evidently referring to the slope of the terrain prevalent in the entire Platte River resource area. Much of the area for which appellant filed its offers is classified on this map as "no surface occupancy" or "no leasing," suggesting that BLM's decision is based on concern to prevent damage to steep areas. The PEA at page 47 states that topography in the area is

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earlier lease. As a result, it failed to reject Fortune's offer (W-74580) as to lands within sec. 17, T. 32 N., R. 80 W., sixth principal meridian, which were evidently within the previous lease and were thus not subject to offers. BLM may wish to correct this omission on remand.

BLM's decision also rejected offer W-79397 as to the "NW 1/4 NE 1/4, NE 1/4 NW 1/4, Sec. 7, T. 32 N., R. 79 W., 6th principal meridian, Wyoming, because there are no lands in section 7 which can be identified by that description." Sec. 7 is divided into lots and tracts, and Fortune's description was therefore defective. BLM's decision is affirmed insofar as it rejected offer W-79397 for sec. 7.

generally gentle to steep rolling plains, but that areas of steeper slopes are found in the mountains and along some of the major drainages, including Casper Mountain, as identified in map 4, appendix 9. The environmental consequences of surface disturbance of steep slopes and areas with shallow soils are discussed in the PEA at pages 70-71.

The PEA classification and related discussion are not an adequate basis for BLM's action, since we do not accept, without proof, that there is no area within the thousands of acres so classified large, level, and accessible enough to accommodate drilling facilities without environmental damage. The PEA provides an appropriate vehicle for protecting steep-sloped portions of this area: a stipulation forbidding drilling or storage facilities on slopes in excess of a prescribed percentage, without the consent of the Geological Survey (GS). See PEA at 25. BLM has imposed this stipulation in addition to the blanket no-surface-occupancy stipulation, prescribing 25 percent as the limit for drilling without approval by GS, and requiring the operator to provide engineering drawings for drilling on slopes of more than 15 percent. BLM should consider whether the latter stipulation is not adequate, by itself, to protect the area.

Apart from the PEA, the record contains nothing explaining the reasons for BLM's decision, let alone any facts which would allow us to conclude that these reasons are valid as to the specific lands here. In the absence of (1) a clear statement by BLM as to why it is necessary to reject the offers and, in particular, to bar access to the surface so broadly, and (2) evidence showing that these reasons are valid as to the specific lands in question, we cannot affirm BLM's decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the decision appealed from is affirmed in part and set aside in part and the case remanded for further consideration.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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Will A. Irwin  
Administrative Judge

